

OAH Docket No. 7-2500-19797-2  
MPUC Docket Nos. E-002/CN-08-509  
E-002/CN-08-510  
E-002/GS-08-690

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Northern  
States Power Company d/b/a Xcel Energy  
for Certificates of Need for the Prairie  
Island Nuclear Generating Plant for an  
Extended Power Uprate

**SECOND PREHEARING ORDER**

In the Matter of the Application of Northern  
States Power Company d/b/a Xcel Energy  
for Certificates of Need for the Prairie  
Island Nuclear Generating Plant for  
Additional Dry Cask Storage

In the Matter of the Application of Northern  
States Power Company d/b/a Xcel Energy  
for an LEPGP Site Permit for the Prairie  
Island Nuclear Generating Plant (PINGP)  
Extended Power Uprate Project

A Prehearing Conference was held on April 2, 2009, in Hearing Room 11 of the Office of Administrative Hearings before Administrative Law Judge (ALJ) Richard C. Luis. A number of the parties participated by telephone. The following persons noted their appearance:

Thomas P. Harlan and Katherine Becker, Madigan, Dahl & Harlan, P.A., appeared on behalf of the City of Red Wing (Red Wing).

David Aafedt, Winthrop & Weinstine, appeared on behalf of the Prairie Island Indian Community (the Community).

Andrew Brown and Michael Ahern, Dorsey & Whitney, appeared on behalf of Xcel Energy.

Andrew Moratzka, Mackall, Crounse & Moore, appeared on behalf of Gerdau Ameristeel and Marathon Petroleum Company, (Xcel Industrial Intervenors or XLI).

Julia Anderson, Assistant Attorney General and Bill Storm, Planning Director of the Office Energy Security (OES) Energy Facility Permitting Unit, appeared for OES.

Michael Kaluzniak, Senior Facility Planner at the Minnesota Public Utilities Commission, appeared on behalf of the staff of the Public Utilities Commission (the Commission or PUC).

Based on the statements during the Prehearing Conference and the filings and proceedings in this matter, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

## **ORDER**

### **Intervention**

1. The First Prehearing Order issued in this proceeding established April 15, 2009 as the deadline for intervention.<sup>1</sup> On March 26, 2009, the City of Red Wing (Red Wing) filed its Petition to Intervene in this matter.<sup>2</sup>

2. No objections have been received to Red Wing's intervention petition. Existing parties had the opportunity to object within seven days of service of the petition. Those parties participated in the prehearing conference addressing this issue and no objections were raised. Red Wing is admitted as a party in the combined dockets of this proceeding.

### **Schedule**

3. The First Prehearing Order in this matter established a schedule for this proceeding. That schedule provided for the following:

<b>Date</b>	<b>Event</b>
March 17, 2009	Draft EIS prepared by OES (tentative)
April 1, 2009	Xcel's prefiled Direct Testimony
April 15, 2009	Deadline for Petitions to Intervene and requesting non-party participant status
April 22, 2009	OES and Intervenors' prefiled Direct Testimony

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<sup>1</sup> First Prehearing Order, ¶ 16

(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5547709>).

<sup>2</sup> Petition to Intervene on Behalf of the City of Red Wing

(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5838359>).

May 12, 2009	Prefiled Rebuttal Testimony by all parties
May 14, 2009	Public hearings on all dockets (locations TBD)
May 25, 2009	Written Public Comment deadline (must be received by 4:30 p.m.)
May 29, 2009	Prefiled Surrebuttal Testimony by all parties
June 8, 2009	Evidentiary hearing begins
TBD	Posthearing briefs
TBD	Reply Briefs of parties
TBD	ALJ Report and Recommendation to PUC
TBD	Exceptions
TBD	Final PUC decision

4. On March 26, 2009, Red Wing filed a Motion to Amend First Pre-hearing Order seeking to change the schedule in this proceeding as follows:

<b>Date</b>	<b>Event</b>
March 17, 2009	Draft EIS prepared by OES (tentative)
August 1, 2009	Xcel's prefiled Direct Testimony
August 15, 2009	Deadline for Petitions to Intervene and requesting non-party participant status
August 21, 2009	OES and Intervenors' prefiled Direct Testimony
September 7, 2009	Prefiled Rebuttal Testimony by all parties
September 14, 2009	Public hearings on all dockets (locations TBD)
September 28, 2009	Written Public Comment deadline (must be received by 4:30 p.m.)
September 30, 2009	Prefiled Surrebuttal Testimony by all parties

October 5, 2009	Evidentiary hearing begins
TBD	Posthearing briefs
TBD	Reply Briefs of parties
TBD	ALJ Report and Recommendation to PUC
TBD	Exceptions
TBD	Final PUC decision

5. On March 27, 2009, the Prairie Island Indian Community, also known as the Prairie Island Mdewakanton Dakota Community (the Community), filed a Motion to Amend First Prehearing Order or in the Alternative to Stay the Proceedings.<sup>3</sup>

6. Based on the filings of the parties and the discussions at the prehearing conference, the schedule of this proceeding is retained as set out in the First Prehearing Order, except that the City of Red Wing is granted an **EXTENSION** for filing Direct Testimony, through the close of business on Thursday April 30, 2009.

Dated: April 7, 2009

/s/ Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

## MEMORANDUM

### Intervention

As the nearest municipality to the Prairie Island Nuclear Generating Plant, Red Wing bears significant responsibilities regarding public safety arising from its location. This fact alone supports approval of Red Wing's Petition to Intervene in this matter.

<sup>3</sup> Community's Motion to Amend First Prehearing Order or in the Alternative to Stay the Proceedings (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5842702>).

## Scheduling

The State siting and certificate of need process is only part of what is required for Xcel to obtain authorization for its requested uprate in the Prairie Island Nuclear Generating Plant. Xcel also must obtain federal approvals. The Community expressed concern that this matter was proceeding without necessary information being made available from the parallel proceeding, stating:

In a filing recently made on February 27, 2009 by NRC staff with the Atomic Safety and Licensing Board, NRC staff moved the date for the issuance of the Draft Environmental Impact Statement ("EIS") from March 11, 2009 to June 11, 2009. The completion date for the Final EIS has been pushed out to January 6, 2010. Through no fault of its own, the Community's ability to advocate its position in this proceeding has been impacted significantly due to its inability to have access to the NRC Draft EIS as a foundation. Similarly, the Community is greatly concerned that this proceeding is being "rushed" and that the Commission is not going to be able to benefit from a fully-developed administrative record.<sup>4</sup>

Xcel responded that the schedule for the the Nuclear Regulatory Commission's completion of the federal EIS is not relevant to the schedule for this state proceeding. Xcel noted that the Community is participating in the federal proceeding and that issues regarding the federal EIS are appropriate to raise in that forum. Additionally, Xcel noted that OES has not indicated that the revised schedule for the issuance of the draft federal EIS will affect the ability of OES to issue either the draft EIS (which was issued, on schedule, on March 17, 2009) or final EIS in this proceeding.<sup>5</sup>

The Community suggested that Xcel's application for additional generating capacity is affected by "the significant economic down-turn and other considerations...." The Community asserts that the affect on electricity demand by these recent events "have rendered much of what [Xcel] submitted to the Commission in December 2007 seriously outdated." The Community identified the potential effect on Xcel's "overall 'Model,' given the sharp economic down-turn and the corresponding drop in ratepayer demand, and whether demand-side management might satisfy any increase in demand, to the extent that such demand even exists."<sup>6</sup>

At the hearing on this motion, Xcel maintained that the recent economic downturn would have no meaningful impact on the electricity demand needs that

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<sup>4</sup> Community Memorandum, at 4  
(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5842702>).

<sup>5</sup> Xcel Letter, April 1, 2009, ¶ 8  
(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5848350>).

<sup>6</sup> Community Memorandum, at 3-4.

will be met years in the future. Regarding the requested delay in the schedule, Xcel stated:

The effect of delay will be to prevent the Legislature's review of the Commission's decision until the 2011 legislative session. This means that if the Commission's decision were set aside by legislative action and absent a PUC order allowing a phased shutdown of Prairie Island Nuclear Generating Plant, Xcel Energy would have less than three years to replace the 1,100 megawatts of baseload power now provided by Prairie Island. (The federal license for the Unit 1 reactor expires in 2013, and the federal license for Unit 2 expires in 2014.)<sup>7</sup>

Red Wing maintained that good cause exists to adjust the schedule in this matter due to the recent filing of its Petition to Intervene in this matter. Red Wing asserted that it has not had sufficient time to conduct the needed discovery to fully participate in this proceeding. Red Wing asserted that since it "will undoubtedly be significantly impacted both financially and in terms of potential risks if the Certificates of Need are granted, it is imperative that Red Wing be given the opportunity to present evidence and testimony so the true impacts on the health, safety and welfare of the citizens of Red Wing, as well as the financial costs of same, be considered."<sup>8</sup>

Xcel disputed Red Wing's contention that there has been insufficient time for discovery. Xcel noted that "Neither the City nor the Community have identified any new issue that has emerged since the issuance of the First Prehearing Order nearly six months ago to now justify delay in these proceedings."<sup>9</sup>

Xcel stressed that the impact of these requested scheduling changes would delay the required review of the Commission's order by the Minnesota Legislature until 2011. OES also expressed concern about the complications that would arise if a delay in the PUC proceeding interferes with the legislative schedule.

Xcel has entered and will continue to enter into contracts for the necessary equipment and services for the proposed uprate. While Xcel acknowledged that these contracts are generally "backend-loaded" with cancellation rights, Xcel's costs of cancelling these contracts will increase over time. Xcel estimated its increased financial risk as approximately \$100 million if legislative review is postponed from 2010 to 2011.<sup>10</sup>

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<sup>7</sup> Xcel Letter, April 1, 2009, ¶ 2.

<sup>8</sup> Red Wing Motion to Amend, at 2-3

(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5838365>).

<sup>9</sup> Xcel Letter, April 1, 2009, ¶ 7.

<sup>10</sup> Xcel Letter, April 1, 2009, ¶ 3.

The proceedings in these dockets are governed by Minn. Stat. §§ 216B.243, subd. 5, and 216E.03, subd. 9. Each of these statutes establishes a year period for issuance of the certificate of need and site permit running from the date of application. While the statutes allow for these periods to be extended, there has been no showing that either the Community or Red Wing will be prejudiced by retaining the schedule established in the First Prehearing Order, modified only by extending the time allowed for Red Wing to prepare and file Direct Testimony. The schedule in this proceeding is modified accordingly.

R.C.L.